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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B5

[redacted]

DATE: JAN 2 5 2012 OFFICE: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability pursuant to section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center (Director). It is now on appeal before the Chief, Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is a software consulting and services business. It seeks to permanently employ the beneficiary in the United States as a senior software engineer and to classify him as an advanced degree professional pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification, certified by the United States Department of Labor (DOL).

Section 203(b)(2) of the Act provides for immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. The regulation at 8 C.F.R. § 204.5(k)(2) defines "advanced degree" as follows:

> *Advanced degree* means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

The Director determined that the ETA Form 9089 failed to demonstrate that the job requires a professional holding an advanced degree or a baccalaureate degree and five years of progressively responsible experience because it indicated that the petitioner would accept a "combination of foreign education" equivalent to a U.S. bachelor's degree in lieu of a single foreign equivalent degree.

The record shows that the appeal is properly filed and timely. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.

In his appeal brief counsel asserts that the Director was erroneous in determining that the petitioner's acceptance in the labor certification of a combination of educational credentials adding up to a U.S. bachelor's degree equivalent was inconsistent with its petition for an advanced degree professional. According to counsel, there is no basis in law or regulation for requiring the equivalent of a U.S. baccalaureate degree to be a single foreign degree, rather than multiple degrees (and/or other educational credentials). Counsel contends that the petitioner's educational specifications in the labor certification were designed so that applicants from European countries with three-year baccalaureate degree programs would not be excluded from consideration as long as they had other academic credits that would raise the overall level of their education to a bachelor's degree equivalent in the United States. The AAO is not persuaded by counsel's arguments.

The definitional regulation at 8 C.F.R. § 204.5(k)(2), quoted above, clearly states that the foreign equivalent of a U.S. baccalaureate degree is a "foreign equivalent degree" in the singular. The regulation does not state that a combination of lesser foreign degrees or other educational credentials can be considered equivalent to a U.S. baccalaureate degree.

On the immigrant visa petition (Form I-140), filed on August 12, 2008, the petitioner indicated (at Part 2.d.) that it was filing for "[a] member of the professions holding an advanced degree." As identified on the petition, therefore, the proffered position requires the services of a person with at least a master's degree or a bachelor's degree and five years of progressive experience in the specialty. *See* 8 C.F.R. § 204.5(k)(2). On the labor certification application (ETA Form 9089) previously filed with the DOL (on February 4, 2008), the petitioner stated that the minimum education required for the subject position is a master's degree in computer science, engineering, or any other related scientific field (Part H, Boxes 4, 4-B, and 7-A), and that a "foreign educational equivalent" would be acceptable (Box 9). The petitioner also stated that an alternate combination of education and experience would be acceptable – namely, a U.S. bachelor of science degree "**or any combination of foreign education equivalent to a U.S. bachelor's degree,**" plus five years of experience (Part H, Boxes 8, 8-B, and 8-C).[1] (Emphasis added.)

Thus, the labor certification does not restrict consideration to a professional holding an advanced degree (or a bachelor's degree and five years of experience) or a foreign equivalent degree. It also allows for a combination of educational credentials "equivalent to a U.S. bachelor's degree" plus five years of experience. Since the educational requirements described in the ETA Form 9089 may be fulfilled with multiple educational credentials no one of which is equivalent to a U.S. bachelor's degree, they do not correlate with the educational requirements for an advanced degree professional – the classification sought by the petitioner on the Form I-140. Accordingly, the petition cannot be approved.

The Director's decision will be affirmed, and the appeal dismissed.

The burden of proof in these proceedings rests solely with the petitioner. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.

[1] The documentation of record includes academic records showing that the beneficiary earned a Bachelor of Technology degree in 1996 upon completion of a four-year course of study in the Electrical and Electronics Branch of Mahatma Gandhi University in Kottayam, India. It also includes letters from former employers showing that the beneficiary has at least five years of experience as a senior software engineer based on employment with Ciena Corporation (Acton, Massachusetts) and Agilent Technologies (Loveland, Colorado) in the years 2001-2006.